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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Alfonzo Smith,

10 Plaintiff,

11 v.

12 Chrysler Group LLC,

13 Defendant.

No. CV-13-01732-PHX-NVW

ORDER

14 Before the Court is Defendant Chrysler Group, LLC's Motion to Dismiss
15 (Doc. 21), Plaintiff Alfonzo Smith's Response (Doc. 22), and the Reply (Doc. 23). For
16 the following reasons, Chrysler Group's Motion to Dismiss (Doc. 21) will be denied in
17 part and granted in part.

18 **I. FACTS**

19 For the purpose of this Motion to Dismiss under Rule 12(b)(6), all allegations of
20 material fact are assumed to be true and construed in the light most favorable to the non-
21 moving party. *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). In 1999,
22 Plaintiff Alfonzo Smith voluntarily sold his ownership interest in a Virginia-based
23 Chrysler dealership as part of a Chrysler plan to consolidate dealerships. In exchange for
24 selling his ownership interest in the Virginia dealership, Smith was given a first right of
25 refusal on purchasing a new dealership. He exercised that right by entering into a
26 contract purchase the Superstition Springs Chrysler Dealership (the "Dealership") that
27 Chrysler was constructing in Superstition Springs, Arizona. To finance his purchase,
28 Smith opted into Chrysler's Marketing Investment Program which allowed him to

1 finance the purchase of the dealership with minimal initial capital outlay.

2 In 2001, the Dealership submitted an application to transact business in Arizona to
3 the Arizona Corporation Commission. The Dealership's application was approved, but
4 Smith was not listed as a director or officer. The application listed all officers and
5 directors as located at "1000 Chrysler Drive, Auburn Hills, MI 48326." (Doc. 21,
6 Exb. A). After gaining approval to transact business in Arizona, Chrysler and the
7 Dealership executed a Sales and Service Agreement which outlined Chrysler's
8 requirements of the franchise Dealership, including the minimum working capital.
9 (Doc. 21, Exb. B). The agreement listed Smith as the Dealership's General Manager and
10 awarded him 100% of the Dealership's non-voting stock. Chrysler's predecessor is listed
11 as owning 100% of the voting stock, and Richard Bridenstine is listed as the Dealership's
12 president. Chrysler asserts the Sales and Service Agreement was executed by Bridenstine
13 on behalf of the dealership, but Smith asserts he was the one to sign on behalf of the
14 dealership. The signature on the document filed with this Motion suggests Smith may
15 have signed the agreement because although the signature is illegible, the title of the
16 signee is described as "Director/GM," which suggests it was signed by the General
17 Manager, Smith. A second Sales and Service Agreement was executed in 2009 with
18 what appears to be the same signature. (Doc. 21, Exb. E).

19 In 2003, Smith and Chrysler executed the Stock Agreement which outlined the
20 terms under which Smith and Chrysler could purchase and sell their respective stock
21 holdings. Under the agreement, Smith owned 100% of the Dealership's common, non-
22 voting stock while Chrysler owned 100% of the preferred, voting stock. It was
23 contemplated that Smith would eventually purchase all of Chrysler's preferred stock and
24 obtain complete ownership of the Dealership. The Stock Agreement gave Smith the right
25 to ask the Dealership's Directors to redeem all shares of preferred stock, but Chrysler was
26 permitted to decline the request if the Dealership lacked the minimum working capital
27 outlined in the Dealership's Sales and Service Agreement. The Stock Agreement also
28 provided that until Smith had purchased all of the preferred, voting stock, Chrysler owed
all shares of voting stock and could use that voting power to remove Smith as Director or

1 General Manager.

2 At the same time he executed the Stock Agreement, Smith entered into a Bonus
3 Agreement with the Dealership which provided that, in addition to his salary, the
4 Dealership would pay him a bonus of 25% of the operating profit, at least half of which
5 Smith was required to use to purchase preferred stock from Chrysler. In the Bonus
6 Agreement, Smith signed his initials next to the paragraph describing how he was an at-
7 will employee, subject to the absolute right of the Dealership or Chrysler to remove him.
8 (Doc. 21, Exb. C). If Smith ceased to be General Manager before acquiring all of
9 Chrysler's preferred stock, Smith would be forced to surrender his stock to Chrysler at a
10 value determined by the Dealership's auditor. (*Id.*).

11 In his role as General Manager, Smith undertook many of the responsibilities of
12 any other franchised dealer, including negotiating financing arrangements with lenders to
13 stock the Dealership and abiding by Chrysler's franchise terms and conditions.
14 (Docs. 22). By 2012, Smith was a majority owner in the Dealership, holding 68.5% of
15 the outstanding stock. (Doc. 19, ¶ 52). Financials as of August 2012 suggest Smith
16 would have been able to use his year end bonus to purchase Chrysler's remaining
17 preferred stock. (*Id.* at ¶ 66).

18 In September 2012, a Chrysler Area Sales Manager visited Smith at the Dealership
19 to go over the June 2012 sales numbers, specifically the Minimum Sales Responsibility, a
20 metric designed by Chrysler to establish threshold sales quotas for dealerships. (Doc. 19,
21 ¶¶ 54-56). The Dealership was meeting the Minimum Sales Responsibility for certain
22 vehicles but falling below the Minimum Sales Responsibility on others. (*Id.* at ¶ 54). A
23 "Dealer Minimum Sales Responsibility Action Plan" was developed to address various
24 ways Chrysler and Smith could improve the Minimum Sales Responsibility metric. (*Id.*
25 at ¶ 55). Less than a month later, a Chrysler employee, Mitch Mitchel emailed Smith a
26 spreadsheet covering the Dealership's August 2012 financials. (*Id.* at ¶ 56). Mr. Mitchell
27 stated that because the dealership was only at 71.2% of the Minimum Sales
28 Responsibility, and needed to be at 100% Minimum Sales Responsibility for Smith to
complete his acquisition of the Dealership, it seemed unlikely Chrysler would allow

1 Smith to purchase all outstanding stock by the March 2013 deadline. (*Id.* at ¶¶ 57-58).
2 Up until that point, Smith was unaware of any preferred stock acquisition deadline, but he
3 was unconcerned because it was his understanding that Chrysler rarely took adverse
4 action against dealerships that fell behind the Minimum Sales Responsibility, and he was
5 confident he would be able to purchase the outstanding stock by that date. (*Id.*, Doc. 22).

6 On October 29, 2012, Smith was terminated as General Manager and as a member
7 of the Dealership's Board of Directors. (Doc. 19, ¶ 62). Chrysler notified neither Smith
8 nor the Director of the Arizona Department of Transportation of its actions. (*Id.* at ¶ 63).
9 Smith asserts that Mr. Mitchell informed him that the reason for his termination was that
10 one of his employees may have had a conflict of interest with an outside company the
11 Dealership did business with. (*Id.*). Smith now asserts that Chrysler has either
12 terminated or is about to terminate the Dealership franchise in bad faith and has moved
13 forward with its plan by registering the trade name "Superstition Springs Chrysler Jeep
14 Dodge Ram," which is owned by Superstition Springs Mid LLC, a Chrysler-controlled
15 entity. (Doc. 22).

16 Chrysler asserts it was entitled to fire Smith because he was an at-will employee of
17 the Dealership, as defined in the Bonus Agreement. (Doc. 21, Exb. D). Smith, however,
18 argues he was a Chrysler franchisee and his termination was in violation of federal laws
19 which require a franchisor to act in good faith when terminating a dealership,
20 15 U.S.C. § 1222, and in violation of Arizona law, which requires a franchisor to provide
21 notice to the Arizona Department of Transportation and show good cause for terminating
22 the franchise, A.R.S. §§ 28-4453(D); 28-4457.

23 To challenge his termination, Smith first lodged a petition with the Arizona
24 Department of Transportation, entitled "Petition to Enforce Dealer Franchise Laws and
25 Request for Hearing." (Doc. 21, Exb. G). The Arizona Department of Transportation
26 responded by saying it lacked authority to preside over an administrative hearing in the
27 matter. (Doc. 21, Exb. H). Smith next submitted a petition for reconsideration, which
28 was denied, as the Administrative Law Judge concluded the dispute appeared "to be a
wrongful termination suit as opposed to [one for] franchise or dealer violations" and that

1 the Arizona Department of Transportation did not have jurisdiction over Smith's claims.
2 (Doc. 21, Exb. J). Smith then filed this action.

3 In his First Amended Complaint (Doc. 19), Smith alleges Chrysler violated the
4 Automobile Dealers' Day in Court Act (Count I), he is entitled to seek a declaratory
5 judgment as to his franchisee status under Arizona and federal law (Count II), he is
6 entitled to seek a declaratory judgment that he was a person in a "bona fide relationship"
7 with Chrysler under Arizona law (Count III), he is owed civil damages pursuant to A.R.S.
8 § 28-4307 due to Chrysler's alleged illegal ownership interest in the Dealership (Count
9 IV), he is owed civil damages pursuant to A.R.S. § 28-4307 for Chrysler's failure to
10 provide notice and show good cause for his terminations (Count V), Chrysler tortuously
11 interfered with his contract and business expectancy with the Dealership (Count VI), and
12 Chrysler committed breach of contract and breach of the implied covenant of good faith
13 and fair dealing (Count VII). Chrysler moves to dismiss Counts I, II, III, IV, VI, and VII
14 under Rule 12(b)(6), Federal Rules of Civil Procedure. (Doc. 21).

15 **II. RULE 12(b)(6), FEDERAL RULES OF CIVIL PROCEDURE**

16 A motion to dismiss challenges the legal sufficiency of the plaintiff's pleadings.
17 Dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure can be based on
18 "the lack of a cognizable legal theory" or "the absence of sufficient facts alleged under a
19 cognizable legal theory." *Balistreri v. Pacifica Police Dep't.*, 901 F.2d 696, 699
20 (9th Cir. 1990). To avoid dismissal, a complaint need include "only enough facts to state
21 a claim for relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S.
22 544, 570 (2007).

23 On a motion to dismiss under Rule 12(b)(6), all allegations of material fact are
24 assumed to be true and construed in the light most favorable to the non-moving party.
25 *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). "Threadbare recitals of the
26 elements of a cause of action, supported by mere conclusory statements, do not suffice."
27 *Ashcroft v. Iqbal*, 566 U.S. 662, 678 (2009). *Id.* "A claim has facial plausibility when
28 the plaintiff pleads factual content that allows the court to draw the reasonable inference
that the defendant is liable for the misconduct alleged." *Id.* "The plausibility standard is

1 not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a
 2 defendant has acted unlawfully.” *Id.* To show that the plaintiff is entitled to relief, the
 3 complaint must permit the court to infer more than the mere possibility of misconduct.
 4 *Id.* If the plaintiff’s pleadings fall short of this standard, dismissal is appropriate.

5 **III. COUNTS I, II, IV, AND VI: SMITH’S STATUS AS A FRANCHISEE**

6 Defendant Chrysler Group LLC contends Counts I, II, IV, and V of Smith’s
 7 Amended Complaint (Doc. 19) must be dismissed because Plaintiff is not an “automobile
 8 dealer” or “franchisee” as defined under federal or Arizona law and therefore lacks
 9 standing. Smith responds that the intertwining of stock acquisitions by Smith from
 10 Chrysler with bonuses paid from the Dealership to Smith and the Sales and Service
 11 Agreement executed by Smith on behalf of the dealership created a web of integrated
 12 agreements that, taken together, establish a franchise between Smith and Chrysler.
 13 (Doc. 19, ¶ 36).

14 **A. Smith’s Status as a Dealer under Federal Law**

15 The Automobile Dealers' Day in Court Act (“ADDCA”), 15 U.S.C. §§ 1221–
 16 1225, “is a remedial statute enacted to redress the economic imbalance and unequal
 17 bargaining power between large automobile manufacturers and local dealerships,
 18 protecting dealers from unfair termination and other retaliatory and coercive practices.”
 19 *Maschio v. Prestige Motors*, 37 F.3d 908, 910 (3d Cir. 1994). It permits automobile
 20 dealers to sue manufacturers for their failure “to act in good faith in performing or
 21 complying with any of the terms or provisions of the franchise, or in terminating,
 22 canceling, or not renewing the franchise with said dealer.” 15 U.S.C. § 1222. Under the
 23 statute, an automobile dealer is defined as “any person, partnership, corporation,
 24 association, or other form of business enterprise . . . operating under the terms of a
 25 franchise and engaged in the sale or distribution of passenger cars, trucks, or station
 26 wagons.” 15 U.S.C. § 1221(c). A franchise is “the written agreement or contract
 27 between any automobile manufacturer engaged in commerce and any automobile dealer
 28 which purports to fix the legal rights and liabilities of the parties to such agreement or

1 contract.” *Id.* at (b).

2 To have standing to sue Chrysler under the ADDCA, Smith must be an automobile
3 dealer. To be an automobile dealer, Smith must have been “operating under the terms of
4 a franchise.” 15 U.S.C. § 1221(c). According to Chrysler, the franchise agreement in
5 this action was the Sales and Service Agreement, which was executed by the Dealership
6 and not by Smith. It follows, Chrysler argues, that only the Dealership, or someone suing
7 on behalf of the Dealership, is eligible to bring suit under the ADDCA, meaning Smith
8 has no right to bring this suit as an individual. Smith, however, asserts that although he
9 may not be a direct party to what Chrysler labels the franchise agreement, taken as a
10 whole, his relationship with Chrysler constituted a franchise. To support his claim, he
11 points to a more expansive reading of the ADDCA that grants standing to plaintiffs who,
12 like him, have no ability to sue on behalf of the franchised dealership but whose
13 financing and management arrangements with the manufacturer combine to resemble a
14 franchise in substance.

15 Smith is correct in his assertion that some courts have granted standing under the
16 ADDCA to individuals party to agreements that amount to a franchise in substance, if not
17 form. These courts have permitted individuals who were deemed essential to the
18 operation of the dealership, but party to financing agreements that prevented them from
19 suing on behalf of the franchised dealership, to bring suit on behalf of themselves. *See,*
20 *e.g., Kavanaugh v. Ford Motor Co.*, 353 F.2d 710, 716-17 (7th Cir. 1965) (granting
21 standing to an individual shareholder in a dealership who was deemed essential to its
22 operation but had no power to sue on behalf of the dealership); *see also Lewis v. Chrysler*
23 *Motors Corp.*, 456 F.2d 605, 607 (8th Cir. 1972) (noting that “the term automobile dealer
24 is to be given the construction that best serves the congressional purpose of
25 supplementing the antitrust laws, and balancing the power heavily weighted in favor of
26 automobile manufacturers”) (internal quotations and citations omitted).

27 Other courts, however, have rejected the idea that individuals who have an
28 ownership interest in the dealership, but who are not party to the franchise agreement,

1 have standing under the ADDCA. *See, e.g., Bronx Chrysler Plymouth, Inc. v. Chrysler*
2 *Corp.*, 212 F. Supp. 2d 233, 243 (S.D.N.Y. 2002) (noting that the Second Circuit “firmly
3 rejected individual standing, at least where . . . the individual shareholder sues only in his
4 own behalf, and not, as in *York Chrysler–Plymouth*, alongside the corporate franchisee
5 itself”); *Pearson v. Ford Motor Co.*, 68 F.3d 1301, 1303 (11th Cir. 1995) (finding that a
6 plaintiff with a minority stock interest in a dealership who was not “inextricably woven
7 into the franchise agreement” had no standing to sue under the ADDCA).

8 In general, the inquiry into whether an individual not party to the ostensible
9 franchise agreement has standing requires a fact-intensive examination of the entire
10 transaction. In the leading Seventh Circuit case, *Kavanaugh*, a contract between the
11 plaintiff Kavanaugh and Ford Motors provided for the formation of a corporation to carry
12 out the business of the automobile dealership, with Kavanaugh designated as the
13 dealership’s operator. *Kavanaugh*, 353 F.2d. at 712. The dealership was financed such
14 that Ford retained all voting stock. *Id.* Kavanaugh was required to purchase dealership
15 stock from Ford with a percentage of his annual bonus but could not acquire voting rights
16 in the corporation until Ford had relinquished all of its preferred stock ownership. *Id.*
17 The stock agreement also called for a management contract to be executed between
18 Kavanaugh and the dealership and a sales contract to be executed by Ford and the
19 dealership. *Id.* at 713. The contract was terminable at-will by either party, and when
20 sales at the dealership began to decline, Ford terminated the contract, determined
21 Kavanaugh’s stock was worthless, and paid him one dollar for his ownership interest in
22 the dealership. *Id.* at 715.

23 As in this action, Kavanaugh brought suit under the ADDCA and the
24 manufacturer, Ford, countered that Kavanaugh had no standing under the Act because he
25 was not a party to the franchise agreement, which Ford asserted was the sales agreement
26 between itself and the dealership. *Id.* at 713. The Seventh Circuit determined that the
27 formation, sales, and management contracts should be read together as an integrated
28 agreement between Kavanaugh and Ford, holding that if “other written agreements are so

1 interwoven with the document ostensibly designated as the franchise as to affect
2 materially the legal significance of the latter, they must be regarded as part of the
3 franchise agreement.” *Id.* at 715. The court went on to conclude that Kavanaugh had
4 applied to Ford for a dealership as an individual, not on behalf of a corporation, that the
5 agreement between Ford and Kavanaugh emphasized Kavanaugh’s importance to the
6 transaction, and that it was obvious from the contracts that “Kavanaugh was deemed
7 essential to the operation of the dealership.” *Id.* at 716. Furthermore, with Ford retaining
8 all voting stock in the corporation, there was no way for the dealership to bring suit under
9 the act, as Ford was unlikely to sue itself. *Id.* at 717. The court examined the history and
10 purpose of the ADDCA and noted that:

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12 The position of the dealer had been such that his “franchise” agreement
13 with the manufacturer was little short of illusory. . . . It is settled doctrine
14 that the fiction of corporate entity will be disregarded whenever it has been
15 adopted or used to evade the provisions of a statute. *Schenley Distillers*
16 *Corp. v. United States*, 326 U.S. 432, 437 (1946); *United States v. Lehigh*
17 *Valley R.R. Co.*, 220 U.S. 257, 272 (1911); *Metropolitan Holding Co. v.*
18 *Snyder*, 79 F.2d 263, 266 (8th Cir. 1935). . . . For the reasons we have
19 demonstrated, the Dealers’ Day in Court Act would be subverted in the
instant case if the corporate format adopted by the parties were given
recognition. Hence, we must ‘pierce the veil’ of the corporate entity and
look to the substance and reality of the situation. In the interest of justice,
the corporate fiction must be ignored.

20
21 *Kavanaugh*, 353 F.2d at 717. The court went on to conclude that Kavanaugh was an
22 automobile dealer operating under the terms of a franchise agreement within the meaning
23 of the ADDCA. *Id.* at 718.

24 Chrysler suggests the leading Ninth Circuit case interpreting standing under the
25 ADDCA, *Sherman v. British Leyland Motors, Ltd.*, 601 F.2d 429 (9th Cir. 1979),
26 expressly rejects *Kavanaugh*. But *Sherman* did not reject *Kavanaugh*, it found
27 *Kavanaugh* inapplicable on its facts. In *Sherman*, the plaintiff brought suit under the
28 ADDCA on behalf of himself and the corporation dealership, of which he was president
and sole shareholder. 601 F.2d at 435. Only the dealership was party to the actual

1 franchise agreement. *Id.* The Ninth Circuit held that the plaintiff could not sue under the
2 ADDCA on behalf of himself because, even though the franchisor “recognized the
3 importance of [the plaintiff’s] services and those of his wife to the corporation,” it was
4 not enough to “warrant departure from the general rule of separation of identities, nor
5 afford Sherman standing to bring suit in his individual capacity as a shareholder or
6 creditor on any of the claims asserted [under the ADDCA].” *Id.* at 439-40. The *Sherman*
7 court noted, in a footnote, that it found *Kavanaugh*’s analysis inapplicable because its
8 facts were distinguishable. *Id.* at 440 n.11.

9 *Sherman* did, however, expressly disagree with a Fifth Circuit case granting
10 standing to an individual not party to a franchise agreement. 601 F.2d at 440 n.11 (citing
11 *York Chrysler-Plymouth, Inc. v. Chrysler Credit Corp.*, 447 F.2d 786 (5th Cir. 1971)). In
12 *York Chrysler-Plymouth*, the Fifth Circuit granted standing to the individual owners of a
13 dealership, in addition to the dealership, finding that the individual owners “were made
14 essential to the operation of the dealership by agreement with Chrysler Motors.” *Id.* at
15 790. *York*, however, provides little explanation or analysis of the contracts entered into
16 by the individual owners and the dealership and concluded the individual owners were
17 entitled to sue under the ADDCA because Chrysler has vested the individual owners with
18 “personal responsibility for keeping the franchise viable.” *Id.* at 791. *Sherman* disagreed
19 with the holding in *York*, noting the provision “that if certain stockholders did not
20 continue as principals in the business the dealership could be terminated by the
21 franchisor, was for the benefit of the latter only and did not expand the parties to the
22 agreement.” *Sherman*, 601 F.2d at 440 n.11. The *Sherman* court concluded that claiming
23 an individual is integral to a franchise agreement is not, on its own, enough to grant
24 standing under the ADDCA. *Id.* at 441.

25 But *Sherman* did not foreclose on the possibility that certain facts may warrant a
26 departure from the general rule that only parties to the franchise agreement have standing
27 under the ADDCA. Instead, the court found that Sherman’s role as president and sole
28 shareholder, as well as the franchisor’s recognition of Sherman’s importance to the
dealership, was not enough to warrant blending the individual and corporate identities.

1 *Sherman*, 601 F.2d at 440. A key distinction between *Sherman* and this action is that the
2 plaintiff in *Sherman* was the sole shareholder of the dealership, meaning he was able to
3 assert claims under the ADDCA on behalf of the dealership. He was not a party to an
4 investment contract that stripped him of voting power.

5 Here, Smith's claims are more akin to *Kavanaugh*, as Smith is unable to bring a
6 claim on behalf of the Dealership because Chrysler controls all of the Dealership's voting
7 stock. No precedent in the Ninth Circuit limits our inquiry into Smith's franchisee status
8 to the four corners of the contract Chrysler asserts is the franchise agreement.
9 Accordingly, to decide whether Smith is a franchisee for the purposes of the ADDCA, we
10 must look not only at the language in all the relevant contracts but also at the economic
11 substance of the entire transaction to determine whether the separate agreements are so
12 inexorably linked that, together, they establish a franchise between Chrysler and Smith.

13 On the pleadings, Smith has alleged sufficient facts to suggest that the contracts
14 between Smith and Chrysler, Chrysler and the Dealership, and the Dealership and Smith
15 are interrelated and can be read in combination as forming a franchise between Smith and
16 Chrysler. The Bonus Agreement, for example, was executed by Smith and the
17 Dealership but gives Chrysler the right to terminate Smith. (Doc. 21, Exb. D). The Sales
18 and Service Agreements recognize that Smith is an integral part of the franchise whose
19 "abilities, expertise, knowledge and integrity" are material to Chrysler and acknowledge
20 Chrysler's reliance on Smith's "substantial continuing personal participation in the
21 management of" the Dealership. (Doc. 21, Exb. E).

22 Smith also alleges facts which suggest that, in his role as General Manager, he
23 undertook many of the responsibilities of a franchised dealer, including negotiating
24 financing arrangements with lenders to stock the Dealership and abiding by Chrysler's
25 franchise terms and conditions. Finally, Smith alleges that Chrysler partially owns, and
26 completely controls, the Dealership and that Chrysler cannot or will not assert a claim
27 against itself on behalf of the Dealership. Determining whether Smith is an automobile
28 dealer for the purposes of the ADDCA will require a fact-intensive inquiry that is not
amenable to resolution on the pleadings. For now, Smith has alleged facts sufficient to

1 survive a motion to dismiss. Chrysler's Motion to Dismiss Count I on the grounds that
2 Smith lacks standing under the ADDCA will be denied.

3 **B. Count II - Smith's Status under Arizona Law**

4 Chrysler next moves to dismiss Smith's claims under the Arizona statute
5 governing automobile franchises, arguing that Smith is not a franchisee as defined by
6 Arizona law. Smith asserts that, with there being no cases interpreting who qualifies as a
7 franchisee under Arizona's law, the same analysis applied to the federal law should be
8 applied to infer that he is a franchisee under the Arizona statute.

9 Arizona regulates the termination of automobile dealer franchises by requiring a
10 franchisor to notify the franchisee and the director of the Arizona Department of
11 Transportation of its intention to terminate a franchise. A.R.S. § 28-4453(D). Arizona
12 also requires a franchisor to show "good cause" for termination or nonrenewal of a
13 franchise, A.R.S. § 28-4452(A), and provides for a hearing with Arizona Department of
14 Transportation on the issue, A.R.S. § 28-4456. Chrysler did not notify Smith or the
15 Arizona Department of Transportation of its intention to terminate Smith, so when Smith
16 discovered he had been terminated, he petitioned Arizona Department of Transportation
17 for a hearing. Arizona Department of Transportation labeled Smith "a franchisee for
18 Superstition Springs Chrysler Jeep Dodge," but denied Smith's request for a hearing on
19 the grounds that it appeared to reflect a wrongful termination suit as opposed to a suit
20 involving franchise or dealer operations. (Doc. 21, Exb. J). Chrysler argues this Court
21 should adhere to the Arizona Department of Transportation's determination that Smith's
22 claims do not involve violations of Arizona's automobile dealer franchise laws.

23 But this action is not an appeal from an administrative determination and no
24 deference is owed to the Arizona Department of Transportation's findings. Furthermore,
25 the Arizona Department of Transportation's ruling focused on an arbitration clause,
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1 which neither party seeks to enforce,¹ and provided little discussion as to why it
2 concluded that Smith was protesting the termination of his employment rather than the
3 termination of the franchise. (Doc. 21, Exb. J).

4 Arizona law defines a franchisee as “a person who both: (a) Receives new motor
5 vehicles from the franchisor under a franchise [and] (b) Offers and sells to and services
6 new motor vehicles for the general public.” A.R.S. § 28-4301(13). Smith must be a
7 franchisee to have standing under Arizona’s dealership statutes. A.R.S. § 28-4307.

8 Arizona’s automobile dealer franchise law differs from its federal analog in that it
9 anticipates financing arrangements like the Stock Agreement entered into by Smith and
10 Chrysler. Although manufacturers are generally prohibited from owning dealerships in
11 Arizona, manufacturers are permitted to own a dealership if they are in a bona fide
12 relationship with a qualified person who makes “a substantial unencumbered bona fide
13 initial investment in the dealership that is reasonable and consistent with standard
14 business practices.” A.R.S. § 28-4460(B)(1)(b). That person must be given the
15 opportunity to acquire “substantial portions of the factory’s remaining ownership interest
16 in substantial regular periodic payments throughout the acquisition period.” *Id.*

17 Chrysler suggests that, under this statute, Smith is somehow prohibited from being
18 both a franchisee and a “qualified person in a bona fide relationship” with Chrysler.
19 Nothing in the statutory scheme supports this reading. The statute is designed to prevent
20 a manufacturer from unfairly competing with its dealers and outlines the few
21 circumstances under which it is acceptable for a manufacturer to hold an ownership
22 interest in its own franchise. *Id.* at (A), (B). Although the statute contemplates that the
23 manufacturer may hold an ownership interest in a dealership and provides for some
24 protections to a person in a “bona fide relationship” with the owner-manufacturer, it does

25
26 ¹ The Sales and Service Agreement executed by the Dealership and Chrysler
27 contains a binding arbitration clause. Both Arizona and federal law invalidate binding
28 arbitration provisions in automobile dealer franchise agreements. *See* A.R.S. § 28-4453
(requiring that arbitration must be voluntarily submitted to by the franchisee according to
a “plan established by the franchisor”); 15 U.S.C. § 1226(a)(2) (requiring separate
consent in writing to arbitrate after a dispute arises, notwithstanding any arbitration
clause in a franchise agreement).

1 not limit the ability of the person in a bona fide relationship to become a franchisee as he
2 or she acquires ownership in the dealership. Whether the person in a bona fide
3 relationship is a franchisee depends on the nature of the relationship as defined by the
4 contracts between the parties.

5 Because no cases interpret the definition of a franchisee under Arizona's
6 dealership franchise statute and the definition of a franchisee under Arizona law is
7 substantially similar to the ADDCA, we rely on cases interpreting the ADDCA guide the
8 determination of Smith rights under Arizona law. *See Sell v. Gama*, 231 Ariz. 327, 327 ¶
9 18, 295 P.3d 421, 425 (2013) (holding that Arizona will defer to federal case law
10 construing a parallel federal statute unless there is a good reason to depart from the
11 federal decisions). Smith has alleged facts sufficient to survive a motion to dismiss
12 challenging his status and right to sue as an automobile dealer under federal law. *See*
13 Section III.A, *supra*. It follows that, at this stage in the pleadings, Smith has alleged facts
14 sufficient to support a plausible claim that he has standing under Arizona's dealership
15 franchise statute. Chrysler's Motion to Dismiss Count I will be denied.

16 **IV. COUNTS II AND III – DECLARATORY JUDGMENT**

17 Under Counts II and III, Smith seeks a declaratory judgment that he is an
18 automobile dealer under federal and Arizona law and that he is person in a bona fide
19 relationship with Chrysler under Arizona law. Chrysler moves to dismiss these Counts,
20 arguing Smith is not entitled to seek a declaratory judgment because his "claims as to his
21 alleged franchisee status are based on circumstances that no longer exist, namely, his
22 position as the Dealership's General Manager, and his rights under the Bonus and Stock
23 Agreements," which have been terminated. (Doc. 21, Pg. 13). Smith asserts that
24 declaratory relief is necessary and proper because if he is a franchisee or person in a
25 "bona fide relationship" with Chrysler under Arizona law, then Arizona law trumps the
26 at-will employment clause in his contract and prohibits Chrysler from terminating his
27 ownership interest in the dealership without good cause. *See* A.R.S. § 28-4457
28 ("Notwithstanding the terms, provisions or conditions of an agreement or franchise," a
franchisor may not terminate a franchise absent "good cause"); *cf.* A.R.S. § 28-

1 4460(B)(1)(b)(vi) (“The qualified person can expect to acquire and retain full and
2 complete ownership of the dealership within a reasonable period of time that is not longer
3 than ten years and on reasonable terms and conditions that are consistent with standard
4 business practices.”). Under federal law, if Smith is a franchisee, Chrysler was required
5 to act in good faith when terminating his franchise. 15 U.S.C. § 1222.

6 A party whose “rights, status, or other legal relations” are impacted by a statute or
7 contract may petition the courts for declaratory judgment. A.R.S. § 12-1832. Arizona’s
8 declaratory judgment act is “remedial; its purpose is to settle and to afford relief from
9 uncertainty and insecurity with respect to rights, status and other legal relations; and is to
10 be liberally construed and administered.” *Id.* “No proceeding will lie under the
11 declaratory judgment acts to obtain a judgment which is advisory only or which merely
12 answers a moot or abstract question.” *Ariz. State Bd. of Directors v. Phoenix Union High*
13 *Sch. Dist.*, 102 Ariz. 69, 73, 424 P.2d 819, 823 (1967). Federal law also recognizes that
14 the “question in each case is whether the facts alleged, under all the circumstances, show
15 that there is a substantial controversy, between parties having adverse legal interests, of
16 sufficient immediacy and reality to warrant the issuance of a declaratory judgment.”
17 *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126 (2007) (internal quotations and
18 citations omitted).

19 Smith seeks to have his status declared under Arizona law, federal law, and a
20 contract. The controversy is not moot, as Chrysler suggests, because if Smith is a
21 franchisee, Smith’s termination may have violated his statutory rights. Smith has alleged
22 facts sufficient to show that his status as a franchisee is an existing controversy that
23 significantly impacts his legal rights. Chrysler’s Motion to Dismiss Counts II and III will
24 be denied.

25 **V. COUNT VI: TORTIOUS INTERFERENCE WITH CONTRACT AND**
26 **BUSINESS EXPECTANCY**

27 Chrysler argues Smith’s tortious interference with contract claim, which alleges
28 that Chrysler tortuously interfered with the Bonus Agreement and with Smith’s business

1 expectancy of acquiring full ownership of the Dealership, is legally deficient.
2 Specifically, Chrysler asserts it cannot be held liable for tortious interference because, as
3 a general rule, a party cannot be held liable for tortious interference with its own contract
4 or business relationship. *Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement*
5 *Masons Local No. 395 Pension Trust Fund*, 201 Ariz. 474, 493 n.19, 38 P.3d 12, 31 n.19
6 (2002).

7 Chrysler is not a stranger to Smith's business relationship with the Dealership.
8 Chrysler owns all voting stock in the Dealership and has a strong interest in Dealership's
9 success. An entity that is directly interested or involved in a business relationship is not
10 generally liable for any harm resulting from its pursuing its own interests. *See Marin Tug*
11 *& Barge, Inc. v. Westport Petroleum, Inc.*, 271 F.3d 825, 832 (9th Cir. 2001) (noting that
12 under California law, which largely parallels Arizona law on tortious interference, "the
13 core of intentional interference with business torts is interference with an economic
14 relationship by a third-party *stranger* to that relationship, so that an entity with a direct
15 interest or involvement in that relationship is not usually liable for harm caused by
16 pursuit of its interests"). Because Chrysler is an integral part of both Smith and the
17 Dealership's business, it cannot be liable for tortious interference with Smith's business
18 expectancy in the Dealership. Chrysler's Motion to Dismiss Smith's tortious interference
19 with business expectancy claim will be granted.

20 Chrysler, however, is not a party to the Bonus Agreement. Although the Bonus
21 Agreement gave Chrysler the right to exercise rights as a Dealership stockholder and
22 remove Smith as a director and employee, Chrysler did not execute the agreement and is,
23 at most, a third-party beneficiary of the contract. Arizona does not insulate third-party
24 beneficiaries from liability for tortious interference with contract. *See Wells Fargo Bank*,
25 201 Ariz. at 493 n.19, 38 P.3d at 31 n.19 (holding that a tortious interference with
26 contract claim could proceed against a defendant who was a third-party beneficiary of the
27 contract).

1 Having established Chrysler is not a party to the Bonus Agreement, to prevail on
2 his tortious interference claim, Smith must allege facts that plausibly establish “the
3 existence of a valid contractual relationship or business expectancy; the interferer’s
4 knowledge of the relationship or expectancy; intentional interference inducing or causing
5 a breach or termination of the relationship or expectancy; and resultant damage to the
6 party whose relationship or expectancy has been disrupted. . . . In addition, the
7 interference must be improper as to motive or means before liability will attach.”
8 *Wallace v. Casa Grande Union High Sch. Dist. No. 82 Bd. of Governors*, 184 Ariz. 419,
9 427, 909 P.2d 486, 494 (Ct. App. 1995).

10 Smith has successfully shown the existence of a contractual relationship with the
11 Dealership (the Bonus Agreement), and Chrysler has admitted in its Motion to Dismiss
12 that it had knowledge of the agreement. Smith argues that Chrysler tortuously interfered
13 with his contract by terminating him his relationship with the Dealership under the Bonus
14 Agreement in violation of both federal and Arizona law. But Chrysler fired Smith in
15 accordance with the terms of the Bonus Agreement. Although Chrysler intentionally
16 caused the termination of Smith’s contractual relationship with the Dealership, it cannot
17 be said that Chrysler tortuously interfered with the contract when it exercised a power
18 expressly granted to it by the contract. Even if the termination provision is unenforceable
19 under federal and Arizona law, an action does not lie for tortious interference with
20 contract. Chrysler’s Motion to Dismiss Count VI will be granted.

21 **VI. COUNT VII - BREACH OF CONTRACT AND THE IMPLIED**
22 **COVENANT**

23 Chrysler moves to dismiss Smith’s claims for breach of contract and breach of
24 the implied covenant of good faith and fair dealing arising out of the Stock Agreement.
25 Per the contract’s choice of law provision, the Stock Agreement is governed by Michigan
26 law. (Doc. 21, Exb. C).

27 Smith alleges Chrysler breached the express terms of the Stock Agreement and the
28 implied covenant of good faith and fair dealing when Chrysler relied on illegal and

1 unenforceable contract provisions to remove him from the Board of Directors and
2 terminate him as General Manager. (Doc. 19, ¶ 137-138). Smith asserts that he had a
3 valid expectation that the Stock Agreement would be executed in a manner that complied
4 with state and federal law, meaning Chrysler would give him notice and a chance to be
5 heard before terminating him. (Doc. 22). He also argues that the “provision of the Bonus
6 Agreement and the Stock Agreement permitting Chrysler unfettered discretion to remove
7 [him] as General Manager and terminate [his] franchise are unenforceable because they
8 are unconscionable and they violate [his] reasonable expectations.” (Doc. 19, ¶ 131).

9 At the outset, it must be determined whether Arizona law permits a franchisee to
10 waive his statutory right to be terminated only for good cause. *See Swanson v. Image*
11 *Bank, Inc.*, 206 Ariz. 264, 267 ¶ 10, 77 P.3d 439, 442 (2003) (holding that “whether the
12 disputed issue is one which the parties could have resolved by an explicit provision in
13 their agreement” is a question for the forum state). A.R.S. § 28-4452(A) provides,
14 “Notwithstanding the terms, provisions or conditions of an agreement or franchise, a
15 franchisor shall not cancel, terminate or refuse to renew a franchise unless the franchisor
16 has good cause for termination or nonrenewal.” A.R.S. § 28-4452(A). If Smith is a
17 franchisee, the parties were not permitted to contract for termination at-will.

18 Smith’s remedy, however, does not lie in an action for breach of the express
19 contract terms. Under the Stock Agreement, Chrysler was entitled to use its “voting
20 power to remove [Smith] as Director and to cause his remove as General Manger of [the
21 Dealership].” (Doc. 19, ¶ 133). In removing Smith, Chrysler exercised the power it was
22 granted in the contract. To the extent that Chrysler executed on an invalid or illegal
23 contract provision, the contract would be void not breached. *Cf. E & S Insulation Co. of*
24 *Ariz., Inc. v. E. L. Jones Const. Co.*, 121 Ariz. 468, 470, 591 P.2d 560, 562 (Ct. App.
25 1979) (noting that a contract which cannot be performed without violating applicable law
26 is illegal and void). Smith may be correct that portions of the agreement violated federal
27 or Arizona law, but that gives rise to a statutory remedy and not to a claim that Chrysler
28 violated the express terms of the contract. Chrysler’s Motion to Dismiss Smith’s claims

1 for breach of the express terms of the contract will be granted, but Smith's claims that the
2 contract, or portions of it, is void will be preserved.

3 Smith's independent claim for breach of the implied covenant of good faith and
4 fair dealing, however, will survive. Chrysler argues no action can lie for the breach of
5 the implied covenant of good faith and fair dealing because Michigan law does not
6 recognize a separate cause of action for the breach of that implied covenant. *Fodale v.*
7 *Waste Management of Mich., Inc.*, 271 Mich.App. 11, 35, 718 N.W.2d 827, 841 (2006).
8 But "Michigan recognizes that an enforceable implied covenant of good faith and fair
9 dealing arises when one party to a contract makes its performance a matter of its own
10 discretion." *Bd. of Trustees of City of Birmingham Employees' Ret. Sys. v. Comerica*
11 *Bank*, 767 F. Supp. 2d 793, 805 (E.D. Mich. 2011) (citing *Stephenson v. Allstate Ins. Co.*,
12 328 F.3d 822, 826 (6th Cir.2003) (applying Michigan law)); *Burkhardt v. City Nat'l.*
13 *Bank of Detroit*, 57 Mich.App. 649, 652, 226 N.W.2d 678, 680 (1975). By giving itself
14 the unfettered right to terminate Smith, Chrysler made its performance a matter of its own
15 discretion and triggered the protections implied covenant under Michigan law.


16 Even if Michigan did not recognize a cause of action for breach of the implied
17 covenant of good faith and fair dealing in this case, Arizona would. "Arizona law
18 implies a covenant of good faith and fair dealing in every contract." *Wells Fargo Bank v.*
19 *Ariz. Laborers, Teamsters and Cement Masons Local No. 395 Pension Trust Fund*,
20 201 Ariz. 474, 490 ¶ 59, 38 P.3d 12, 28 (Ariz. 2002). Arizona, as the forum state, has a
21 strong interest in ensuring parties who enter into contracts in Arizona receive the benefits
22 of the implied covenant. The Court need not decide at this time whether Arizona law
23 would govern in place of the Michigan choice of law clause. Chrysler's Motion to
24 Dismiss Smith's claims for breach of the implied covenant of good faith and fair dealing
25 will be denied.

26 IT IS THEREFORE ORDERED that Defendant Chrysler Group, LLC's Motion to
27 Dismiss (Doc. 21) will be granted in part and denied in part.

28

1 IT IS FURTHER ORDERED that Plaintiff Alfonzo Smith's claims for tortious
2 interference with contract and business expectancy (Count VI) and for breach of the
3 express contract terms (Count VII, in part) from his First Amended Complaint (Doc. 19)
4 are dismissed with prejudice.

5 Dated this 18th day of April, 2014.

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9 Neil V. Wake
10 United States District Judge
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